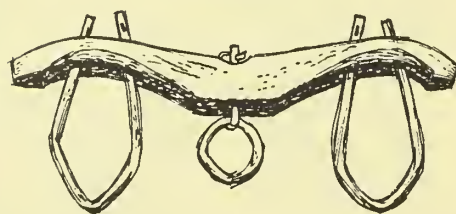


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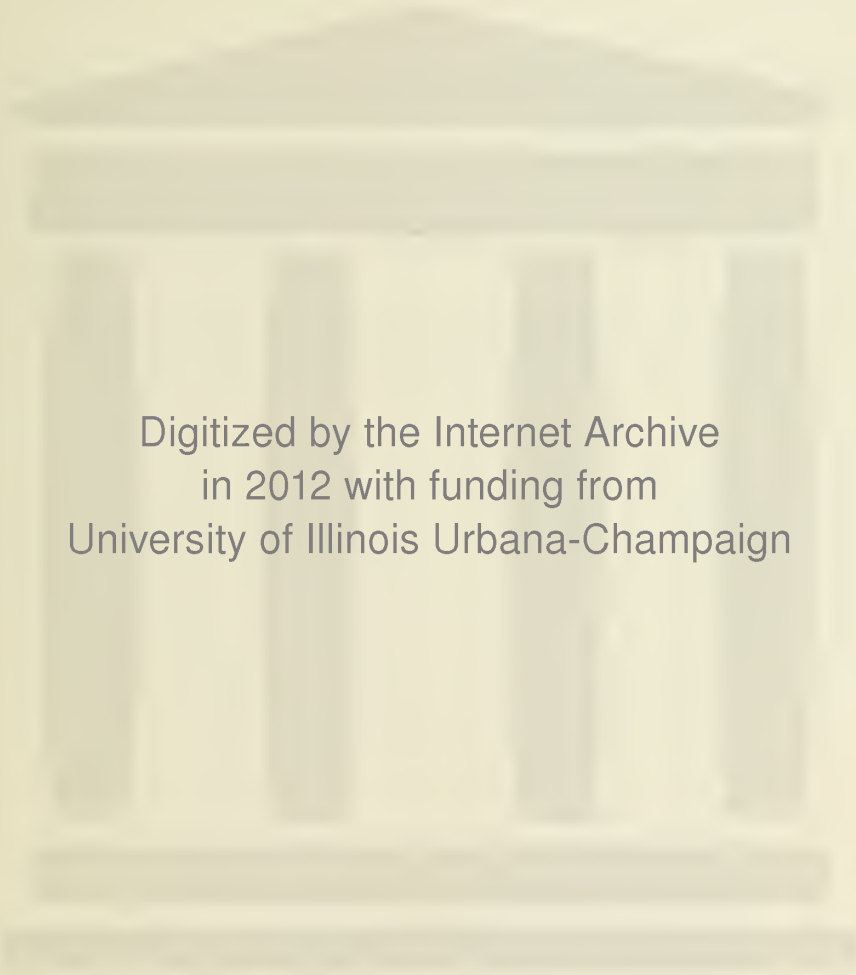
HENRIETTA CALHOUN HORNER

Abraham Lincoln

AN ILLINOIS CENTRAL LAWYER



*A paper read by
Elmer A. Smith, Senior General Attorney
of the Illinois Central Railroad Company,
at a meeting of the Western Conference
of Railway Counsel, February 13, 1945*



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Abraham Lincoln

AN ILLINOIS CENTRAL LAWYER

Lincoln's career as a lawyer is a subject that has held and will eternally hold, the interest of lawyers.¹ It seems appropriate, therefore, that on this day, the day after Lincoln's 136th birthday, something should be said to the Western Conference of Railway Counsel on some aspect of Lincoln's life as a lawyer.

The title of my address today is not Lincoln as a student of law, or as a trial lawyer in the *nisi prius* courts, or as an advocate in the Supreme Court, or as a constitutional lawyer, as interesting and important as are these segments of Lincoln's life. It is a title which comes closer home to railroad lawyers—LINCOLN: AN ILLINOIS CENTRAL LAWYER.

For Lincoln was an Illinois Central lawyer in every sense of the term. Lincoln's letters show that he wanted the Illinois Central as a client. During a period of almost a decade, he tried many cases for the Illinois Central in the lower courts of Illinois. He argued with great distinction and success some very important cases for the Illinois Central in the Supreme Court of Illinois. The last cases that he argued in that Court, in the very year of his election to the Presidency, were on behalf of the Illinois Central. The largest fee that he ever received from any client was from the Illinois Central. I think that it is an accurate statement that Lincoln did more work for the Illinois Central than for any other client. We have in our records a photograph of an Illinois Central pass issued to Lincoln for the year 1858. He is thus described on the face of this pass: "Hon. A. Lincoln, Attorney for

¹ Some of the books and articles which deal with Lincoln's career as a lawyer are: Whitney, *Life on the Circuit with Lincoln*; Richards, *Lincoln, Lawyer-Statesman*; Hill, *Lincoln the Lawyer*; Woldman, *Lawyer Lincoln*; Townsend, *Lincoln the Litigant*; Zane, *Lincoln, the Constitutional Lawyer*, Abraham Lincoln Association Papers, 1932, p. 27; Angle, *Lincoln: Circuit Lawyer*, Lincoln Centennial Association Papers, 1928, p. 19; Thomas, *Lincoln and the Courts*, Abraham Lincoln Association Papers, 1933; Beveridge, *Abraham Lincoln*, Vol. I, pp. 494-607; Pratt, *The Personal Finances of Abraham Lincoln*, pp. 25-27; Weik, *The Real Lincoln—A Portrait*, pp. 127-205; Brown, *Abraham Lincoln and the Illinois Central Railroad, 1857-1860*, Journal of the Illinois Historical Society, Vol. XXXVI, pp. 121-163.

Company." That he used the pass is shown by the fact that it is punched ten times.²

And he did not forget his old client when he became President. In 1863, through his intervention, the Illinois Central received some long overdue payments for the transportation of government property and troops over its lines.³ The Illinois Central then had controversies with the government arising out of the land-grant statutes just as all railroads have today. The government was just as arbitrary then in respect to these matters as it is today.

The Illinois Central Railroad Company was incorporated by an Act of Illinois approved February 10, 1851. What had the years up to 1851 done for Lincoln? He was then forty-two years of age. He had served as a captain and a private in the Black Hawk War. He had practiced law for fourteen years. He had ridden the Eighth Circuit, which was composed at one time of as many as fourteen counties in central Illinois, year in and year out. He had tried innumerable cases in the *nisi prius* courts. He had argued one hundred and three cases in the Illinois Supreme Court. He had served four terms—eight years—in the Illinois State Legislature and one term as a Representative in the Congress of the United States. He had been the acknowledged leader of the Whig Party in Illinois. If he was not in 1851 the leading lawyer in central Illinois, he was certainly one of the leading lawyers.

It would seem only natural that a newly-chartered railroad corporation such as the Illinois Central, undertaking to construct a railroad having a greater mileage than any existing railroad, with its lines extending through the counties in which Lincoln had practiced for so many years, would eventually seek and indeed need the services of a lawyer like Lincoln. The construction and operation of the Illinois Central inevitably gave rise to litigation presenting new and novel problems of all kinds, problems in the solution of which a lawyer like Lincoln would want to participate.

² Henry C. Whitney said that he once took a midnight train at Champaign and found Lincoln on board. Lincoln explained to him that he was going to Chicago, that he had passes on the Illinois Central and the Great Western, that he could get to Chicago by the circuitous route free, while he had no pass by the direct route. Sandburg, *The Prairie Years*, Vol. 2, p. 36.

³ Starr, *Lincoln and the Railroads*, pp. 70-72.

We do not know the exact date when Lincoln was first retained by the Illinois Central. Mr. John G. Drennan, whom some of you will remember as District Attorney for the Illinois Central, once said⁴ that Lincoln appeared before the committee of the Illinois Legislature at the time it reported favorably on the charter creating the Illinois Central.⁵ Apparently this statement was based upon an affidavit made by Judge Anthony Thornton of Shelby County, Illinois. Judge Thornton was a member of the Legislature which granted the charter. He said he had a "distinct recollection that Mr. Lincoln and several members of the Legislature were engaged by the Illinois Central."

It is to be remembered that in those days there were no general incorporation acts, but that the plankroad companies, canal companies, coal-mining companies, and railroad companies were incorporated by special acts of the Legislature. An important part of the work of a lawyer consisted, therefore, of appearing before the Legislature on behalf of persons seeking the passage of an act creating a corporation.

The most important problem before the Illinois Legislature at its 1851 session⁶ was the disposition of lands for a railroad which Illinois had just received from the Federal government under the Act of Sep-

⁴ A. Lincoln, *Once Illinois Central Attorney*, Illinois Central Magazine, February, 1922.

⁵ Beveridge, in his unfinished *Life of Lincoln* (Vol. I, p. 585) says: "It would appear that almost immediately after the construction of the Illinois Central began, James F. Joy (Counsel of the Illinois Central) retained Lincoln as the Company's attorney at Springfield." But the references which Beveridge gives do not support this conclusion. Beveridge quotes a letter written by Lincoln from Springfield to Charles Hoyt (who, according to Beveridge, was an attorney for the Illinois Central at Chicago), on January 11, 1851, a month before the charter was actually granted by the State of Illinois, in which Lincoln said: "On Friday morning last, Mr. Joy filed his papers and entered his motion for a mandamus and urged me to take up the motion as soon as possible."

It is clear, however, that the case Lincoln referred to was not an Illinois Central case, but was a mandamus case brought by the Chicago, Burlington & Quincy Railroad Company against Judge Wilson to require him to appoint commissioners to fix the compensation for appropriating certain property for the use of the railroad company in the construction of depots, engine houses, and shops in Kane County, Illinois (*C. B. & Q. R. R. Co. v. Wilson*, 17 Ill. 123). The Supreme Court's report shows that James F. Joy appeared for the Chicago, Burlington & Quincy, and Lincoln and Goodrich contra. Mr. Joy was a distinguished lawyer and business executive of the Fifties. According to the records of the Illinois Central, he was not appointed Solicitor for the Illinois Central until September 4, 1852 (Minutes of Meetings of Executive Committee, September 4, 1852). Charles Hoyt was not an attorney for the Illinois Central.

⁶ Gates, *Illinois Central Railroad and Its Colonization Work*, pp. 44-61.

tember 20, 1850. This Act granted lands to Illinois, Mississippi and Alabama for the construction of railroads to extend from the western end of the Illinois and Michigan Canal to Mobile, Alabama, via Cairo, with a branch to Dubuque, via Galena, and another branch to Chicago.

Several influential groups of capitalists sought to secure this land grant. Many of the men in these groups were men of prominence, influence, and wealth. They foresaw the prosperity that would follow the construction of a railroad through the grand prairies of Illinois.

In view of the influence of the groups that were before the Legislature in 1851, each presenting its own views with respect to the disposition to be made by Illinois of the lands granted by the Federal government, and the importance to the public of the problem (for upon it depended the question whether Illinois was to have a railroad), it seems only reasonable to suppose that Lincoln must have been retained by some one of these groups.

One of these groups represented eastern capitalists who had done a good deal of work in promoting the Michigan Central Railroad.⁷ These men in their Memorial to the Legislature of January 15, 1851, submitting a plan for the construction and completion of the Illinois Central Railroad, offered to pay to the State annually an unnamed per cent of the gross earnings of the railroad company.⁸ The offer of this eastern group was embodied in the Act incorporating the Illinois Central Railroad,⁹ and hence all the troubles of the Illinois Central respecting the payment of taxes under its charter. Apparently the only piece of luck that the Illinois Central had was the fact that the total tax, in the event there was a State tax, was made 7 per cent, and not 10 per cent as was first proposed.¹⁰

That Lincoln followed the proceedings of the Legislature with interest during the session of 1850-1851 is shown by the fact that at the end of the session he wrote to William Martin: "The legislature having got out of the way, I at last find time to attend to the business you left with me. * * *"¹¹

⁷ Gates, *Illinois Central Railroad and Its Colonization Work*, p. 49. See also Brownson, *History of the Illinois Central to 1870*, pp. 31-39.

⁸ Ackerman, *Illinois Central Railroad—Historical Sketch*, p. 77.

⁹ Act of February 10, 1851, Session Laws of Illinois, 1851, p. 72.

¹⁰ Ackerman, *Illinois Central Railroad—Historical Sketch*, p. 78.

¹¹ Thomas, *Lincoln, 1847-1853*, pp. lvii-lviii.

The statement by Judge Thornton that Lincoln was engaged by the Illinois Central at the 1851 session of the Legislature is disputed by others.¹² W. K. Ackerman, President of the Illinois Central from 1877 to 1883, a man who it might be presumed knew the facts, thus dealt with this point in his *Historical Sketch of the Illinois Central*:¹³

"At the time application was made to the Legislature of Illinois for the Illinois Central Railroad charter, there were certain Western capitalists who desired to secure it, as they did not wish the project to go to Eastern capitalists. Abraham Lincoln was employed on their behalf but he was unsuccessful. When in 1863, Rantoul's son—the present mayor of Salem, Mass.—was introduced to President Lincoln at the White House, the latter referred to this fact and acknowledged he did all he could to stop it, but added with a laugh and slapping his lank thighs, 'Your father beat me, he beat me!'"

Rantoul was one of the men who signed the Memorial to the Illinois Legislature, heretofore referred to, and was one of the incorporators of the Illinois Central. This statement by Mr. Ackerman would seem to settle the question whether Lincoln was retained by the eastern capitalists to urge upon the Legislature the passage of the Act incorporating the Illinois Central Railroad Company.

James F. Joy, Counsel of the Illinois Central, wrote some letters in the early part of 1854 to W. P. Burrall, its President, regarding the employment of a person in Springfield to represent the Illinois Central before the Legislature. No name was mentioned, but it has been suggested¹⁴ that the man referred to was Lincoln. Joy said:

"There is one man, however, whom it is for the interest of the Company to have with us in every way and who hitherto I have always had with me and whom for no consideration should I want against me in the Legislature. I would recommend that he be interested permanently for the Company, as it is apparent that you will need more or less legislation frequently. A retainer or a salary of \$1,000 a year will command him, and he is a valuable ally and a dangerous opponent in any matter before the Legislature."

We do not know whether Joy had Lincoln in mind. We know that what he said would apply to Lincoln. We do not know who was

¹² Pratt, *The Personal Finances of Abraham Lincoln*, pp. 48-50.

¹³ Ackerman, *Illinois Central Railroad—Historical Sketch*, p. 29.

¹⁴ Thomas, *Lincoln, 1847-1853*, pp. lviii-lvix; Pratt, *The Personal Finances of Abraham Lincoln*, pp. 48-50.

retained. All we can now do is to speculate, and hope that further researches into the life of Lincoln during this period will throw some further light upon his relationship with the Illinois Central in the first two or three years of its existence.

Lincoln himself said, in a letter dated February 12, 1857, that he had been in the "regular retainer" of the Illinois Central for two or three years.¹⁵ Whatever uncertainty may exist respecting the exact date when Lincoln was first retained by the Illinois Central, we do know that during the year 1853, Lincoln had established a close and continuing relationship as an attorney for the Illinois Central, for he was asked during that year to serve the Illinois Central in a great variety of matters, large and small.

In April, 1853, Lincoln and Gridley appeared in the McLean Circuit Court at Bloomington, Illinois, on behalf of the Illinois Central in a right-of-way case.¹⁶ In May, 1853, Lincoln appeared in a right-of-way case in Champaign County for the Illinois Central and received a fee of \$25 for his services.¹⁷ And it was on October 7, 1853, that Mason Brayman, Solicitor of the Illinois Central, sent to Lincoln a check for \$250 as a general retainer in the McLean County tax case, later argued by Lincoln in the Supreme Court of Illinois.

A great deal has been written about the more important cases which Lincoln argued for the Illinois Central in the Illinois Supreme Court, to which I shall later refer. What I want to emphasize today is that Lincoln not only argued cases on behalf of the Illinois Central of the greatest importance before the Supreme Court, but that he appeared on behalf of the Illinois Central in a great many relatively unimportant cases in the lower courts of Illinois. Lincoln believed that it was his duty to his client to take the small cases as well as the large ones.

We do not know the exact number of cases in which Lincoln appeared as attorney for the Illinois Central in the *nisi prius* courts of Illinois, either alone or with some associate. We do know that the

¹⁵ Angle, *Lincoln Defended Railroad*, Illinois Central Magazine, February, 1921, p. 40.

¹⁶ Thomas, *Lincoln, 1847-1853*, p. 329.

¹⁷ Pratt, *The Personal Finances of Abraham Lincoln*, p. 49; Beveridge, *Abraham Lincoln*, Vol. I, devotes several pages to Lincoln's early relationship with the Illinois Central, pp. 584-598.

number was large. A list prepared a few years ago from records available at that time shows that Lincoln appeared in some 19 cases in the lower Illinois courts for the Illinois Central. It appears from another list that he was counsel for the Illinois Central in 20 other cases.

We know from other sources, including his letters, that Lincoln either alone or with some associate appeared for the Illinois Central in a large number of cases.

Jesse W. Weik, who collaborated with Herndon in the writing of Herndon's *Life of Lincoln*, and who after Herndon's death continued his search for facts bearing upon Lincoln's life, wrote to Mr. Drennan on December 6, 1908, in part as follows:

"Since your letter arrived, I have gone over my collection of Lincolnia—that is a portion of it—to learn which side of the numerous railroad cases in which Mr. Lincoln appeared he represented. You are correct in your assumption that he was very friendly to the Illinois Central."

Mr. Weik then referred to some cases in which Lincoln sued the Illinois Central, and said:

"There are doubtless other similar cases, but thus far it appears that whenever a controversy arose, Mr. Lincoln, in most cases would be found on the side of the Illinois Central Railroad."¹⁸

On September 23, 1854, Lincoln wrote Mr. Brayman, Solicitor of the Illinois Central, that he had drawn on the Illinois Central for \$100, and said:

"The reason I have taken this liberty is, that since last Fall, by your request, I have declined all new business against the road, and out of which I suppose I should have realized several hundred dollars; I have attended both at DeWitt and here [Bloomington, McLean County] to a great variety of little business for the Company, most of which however remains unfinished, and have received nothing. I wish now to be charged with this sum, to be taken into account on settlement."

I call especial attention to Lincoln's language, "a great variety of little business for the Company." That he did handle "a great variety of little business for the Company" is shown by his letter of September 14, 1855, to James F. Joy, Counsel of the Company. He here advised Joy that he had drawn on him for \$150, that these were

¹⁸ See also Beveridge, *Abraham Lincoln*, Vol. I, p. 593.

all services for the Illinois Central since September, 1854, within the Counties of DeWitt and McLean. Lincoln then went on to say:

"Within that time, and in the two counties, I have assisted, for the road, in at least fifteen cases (I believe one or two more), and I have concluded to ~~let~~ ^{dump} them off at \$10 a case."

Henry C. Whitney had begun the practice of law in Urbana in 1854 at the age of 23. He was associated with Lincoln in many cases and came to know him well. Whitney wrote a book entitled *Life on the Circuit With Lincoln*, many chapters of which throw a good deal of light upon Lincoln's work as a lawyer. What Whitney says about Lincoln's interest in young lawyers, a fact frequently referred to by other men who knew Lincoln,¹⁹ bears repeating:

"I well recollect how kindly and cordially he aided and advised me about my business at court, it being my first appearance at the Bar. I did not feel the slightest delicacy in approaching him for assistance; it seemed as if he wooed me to close intimacy and familiarity at once; and this from no selfish motive at all—nothing but pure disinterested philanthropy and goodness of heart toward a young lawyer just commencing his career." (p. 54)

Whitney said (p. 240) that he was attorney for the Illinois Central from Iroquois County to Effingham, and had a right to employ counsel to aid as he chose; that in the Circuit of David Davis, for many years Judge of the Fourteenth Circuit, and later appointed to the Supreme Court of the United States by Lincoln, Whitney employed Lincoln when Whitney needed aid. Whitney then said:

"I never found any difficulty in Lincoln's appearing for a 'great soulless corporation' (as was always urged against us) and making the best of the case—for they were always in tort, and were for alleged carelessness of our employes, therefore always doubtful. In such cases he always stood manfully by me, and I always, of course, tried to win. He was not, therefore, a milk-sop, nor did he peer unnecessarily into a case in order to find some reason to act out of the usual line; but he had the same animus ordinarily as any lawyer, as a rule." (p. 240.)

And of particular interest to us is Whitney's account of Lincoln's reply to a lawyer who had referred to a "soulless corporation." (p. 237.)

"Through his accurate perceptions, he would discern what was genuine and what was sophistical; many a time have I seen him

¹⁹ Beveridge, *Abraham Lincoln*, Vol. I, p. 527.

tear the mask off from a fallacy and shame both the fallacy and its author. In a railway case we were trying, the opposing lawyer tried to score a point by stating that the plaintiff was a flesh and blood man, with a soul like the jurymen had, while our client was a soulless corporation. Lincoln replied thus:

'Counsel avers that his client has a soul. This is possible, of course; but from the way he has testified under oath in this case, to gain, or hope to gain, a few paltry dollars he would sell, nay, has already sold, his little soul very low. But our client is but a conventional name for thousands of widows and orphans whose husbands' and parents' hard earnings are represented by this defendant and who possess souls which they would not swear away as the plaintiff has done for ten million times as much as is at stake here.' "

As this was a railroad case, and one in which Lincoln and Whitney appeared for the railroad, it is to be presumed that the railroad was the Illinois Central.

Lincoln was associated in DeWitt County in the handling of Illinois Central cases, with a young man by the name of Clifton H. Moore of Clinton. Moore became one of the leading lawyers in central Illinois.²⁰

Beveridge, in writing about the relationship between these younger men and the lawyers like Lincoln, the circuit riders, says:²¹

"When the county-seat towns were large enough, local attorneys, nearly always very young men, came there to live, and they employed older riders of the circuit to conduct the litigation they secured. These country lawyers prepared the cases, and their experienced circuit-riding partners tried them. From these county-seat attorneys, Lincoln received most of his employments, as well in the Supreme Courts as on the circuit."

The studies made by the Abraham Lincoln Association of Lincoln's day-by-day activities show that it was the usual thing for Lincoln to be associated with a local lawyer at points other than Springfield. Lincoln had made himself into a lawyer's lawyer.²² It will be remembered that Lincoln always had an associate in the practice of law in Springfield. He was a partner first of John T. Stuart. This partnership lasted from 1837 to 1841. Stephen T. Logan was Lincoln's second partner, this

²⁰ Whitney, *Life on the Circuit with Lincoln*, p. 4.

²¹ Beveridge, *Abraham Lincoln*, Vol. I, p. 517.

²² Hill, *Lincoln, the Lawyer*, p. 199.

partnership lasting until about 1844. Lincoln and Herndon then formed a partnership which continued until Lincoln's death.

The now historic Eighth Circuit, over which Lincoln travelled, included at one time fourteen counties in Central Illinois, almost one-fifth of the State's area. Court sessions were held in the various counties twice a year. After the court adjourned in one county, the judge rode to the next county seat. Lincoln was the only lawyer who rode the entire circuit, visiting practically all the courts, which lasted about three months in the spring and three in the fall.²³

Weik put it well when he said:²⁴

"In this crude and nomadic life Lincoln spent almost half of each year. Without the conveniences of modern lawyers, stenographer, typewriter, without books even, he moved from court to court, his papers in his hat or coatpockets, his business in his head. The consideration and trial of each case began and ended with itself, and each successive county brought new business and new clients."

It was because of Lincoln's life as a circuit rider that he participated in the handling of Illinois Central cases in Champaign, McLean, and DeWitt Counties. And it was because of the reputation which Lincoln had made for himself as a lawyer in these years of circuit riding that he was retained by the Illinois Central in cases of great importance.

We do not know what the issues were in each and every one of the cases which Lincoln handled for the Illinois Central in the lower courts of Illinois. Most of them were in the very nature of things "little business," of no complexity or importance. Woldman, in his book on *Lawyer Lincoln*, thus describes Lincoln's cases: (p. 27)

"Lincoln's cases were generally of this character—petty and uninteresting. There were actions arising out of neighborhood quarrels, differences about a yoke of oxen, disputes about a cooking-stove, litigation involving damage to growing crops by trespassing cattle, injuries inflicted upon the cattle by vicious watchdogs, replevin suits to recover possession of cattle, horses and sheep running at large, a goodly number of libel and slander suits intended to vindicate the honesty and integrity of aggrieved parties, cases for debt, a few divorces, and the like."

²³ Weik, *The Real Lincoln—A Portrait*, pp. 188, 189.

²⁴ Weik, *The Real Lincoln—A Portrait*, p. 191.

Whitney makes this observation on Lincoln's life on the circuit:²⁵

"It is strange to contemplate that in these comparatively recent, but primitive days, Mr. Lincoln's whole attention should have been engrossed in petty controversies or acrimonious disputes between neighbors about trifles; that he should have puzzled his great mind in attempting to decipher who was the owner of a litter of pigs, or which party was to blame for the loss of a flock of sheep, by foot rot; or whether some irascible spirit was justified in avowing that his enemy had committed perjury; yet I have known him to give as earnest attention to such matters, as, later, he gave to affairs of State."

We may well wonder along with Whitney. Thomas has this to say about the development of Lincoln as he rode the circuit from 1847 to 1853:²⁶

"Not only did Lincoln develop mentally, but as he travelled the circuit he kept in constant contact with the common people, gauged the currents of public opinion, got the people's viewpoint on the political, economic and social problems of the day, and unconsciously prepared himself to be their spokesman. Honest, friendly, a skillful spinner of yarns, he made a host of friends."

The work of Lincoln as a trial lawyer on the Eighth Circuit undoubtedly contributed to the power of Lincoln's mind, so well described by Whitney:²⁷

"He possessed, in a higher degree than that of any other statesman known to fame, the power and faculty of clear and comprehensive statement; in this respect he was so clear and lucid, that it was easy to follow his arguments; his language was composed of plain Anglo-Saxon words and almost always absolutely without adornment; his arguments, though logical and profound, were conveyed to the mind by such easy approaches, that the ordinary understanding could readily grasp and comprehend them."

One wonders whether the leisure that Lincoln had while travelling the circuit did not have something to do with the growth of his mind. There was little case law; the issues in most of the cases were simple and no great amount of time was required to prepare these cases for

²⁵ Whitney, *Life on the Circuit with Lincoln*, p. 62.

²⁶ Thomas, *Lincoln, 1847-1853*, p. lx.

²⁷ Whitney, *Life on the Circuit with Lincoln*, pp. 125-126; see also Hill, *Lincoln the Lawyer*, p. 202.

trial.²⁸ Lincoln had time to reflect, in short, to think. Herndon in one of his letters²⁹ said in speaking of Lincoln:

"He never took the advice of any man or set of men, generally speaking. He never asked the opinion or advice of any man. He was self-reliant, self-poised, self-helping, and self-assertive, but not dogmatic by any means. He clung like gravity to his own opinions. He was the most continuous and severest thinker in America."

The work which Lincoln did for the Illinois Central or which the Illinois Central wanted him to do was not confined to the trial of cases. On March 6, 1856, he rendered an opinion on the question, as he put it, whether there can be any valid pre-emption on sections of land, alternate to the sections granted to the Illinois Central Railroad.³⁰ This opinion is a closely-written three-page opinion. The questions were complicated, but the opinion was short and concise and reveals abundant evidence of careful research and a thorough familiarity with the legal question involved.³¹ Lincoln cited no cases but gave many references to the United States Statutes at Large. The question considered by Lincoln in this opinion was later before the Supreme Court in *Walker v. Herrick*, 18 Ill. 570. Lincoln did not appear as counsel in this proceeding, but the opinion of the Court followed Lincoln's reasoning.

James F. Joy, Counsel of the Illinois Central, telegraphed Lincoln on October 14, 1853, asking Lincoln to come to Chicago and serve as an arbitrator in a crossing case between the Illinois Central and the northern Indiana railroads. The last six words of the telegram read: "Answer and say yes if possible."³² These words bear eloquent testimony to the reputation which Lincoln had made for himself.

Let us now consider the cases argued by Lincoln for the Illinois Central in the Illinois Supreme Court. There were eleven such cases. They ranged from cases involving freight claims and mechanics' liens, in which a few hundred dollars only were at stake, to tax cases which

²⁸ Thomas, *Lincoln, 1847-1853*, p. lv; Richards, *Lincoln, Lawyer-Statesman*, pp. 17-19; Thomas, *Lincoln and the Courts, 1854-1861*, Lincoln Association Papers, 1933, p. 55; Woldman, *Lawyer Lincoln*, pp. 26, 88.

²⁹ Hertz, *The Hidden Lincoln*, p. 90.

³⁰ Angle, *New Letters and Papers of Lincoln*, p. 157.

³¹ Richards, *Lincoln, Lawyer-Statesman*, p. 228.

³² Hill, *Lincoln the Lawyer*, p. 250.

involved the construction to be placed for all time upon the Illinois Central's charter, and upon the result of which cases depended the Illinois Central's financial future and, indeed, its very solvency.

In *Illinois Central Railroad Co. v. Brock*,³³ the Supreme Court affirmed a judgment against the Illinois Central for \$600 alleged damages sustained by Brock as a result of the delay to a shipment of livestock. The Court, in a thirteen-line opinion, rather curtly said that the question was whether the evidence justified the verdict, that as it was a mere question of fact the Court did not regard it as important to attempt an analysis of the evidence before a jury. It has been suggested³⁴ that the Illinois Central carried this case to the Supreme Court to delay the payment of the judgment. The panic of 1857 had struck the country, and the Illinois Central found itself in financial difficulties. It hardly seems, however, that the payment of \$600 would have affected the fortunes of the Railroad Company one way or another. I am inclined to the belief that Lincoln and his associate, Whitney, did not have as good a case as they thought they had.

But Lincoln had better luck in another freight claim case decided by the Supreme Court at the same term (*Illinois Central Railroad Co. v. Morrison*).³⁵ The Supreme Court here reversed a judgment of the Circuit Court of Coles County for \$1,200 against the Railroad Company for damages to a shipment of stock. The release signed by Morrison at the time he shipped the stock stated that the charge for transportation was \$33 per car instead of the first-class rate as fixed by the tariff, and that in consideration of this reduction of the charge Morrison released the Railroad Company from claims for damage except as such claims might arise from the gross negligence on the part of the Railroad Company. The Court, in reversing the judgment of the lower court, said (p. 141):

"We think the rule a good one, as established in England and in this country, that railroad companies have a right to restrict their liability as common carriers, by such contracts as may be agreed upon specially, they still remaining liable for gross negligence or willful misfeasance, against which good morals and public policy forbid that they should be permitted to stipulate."

³³ December Term, 1857, 19 Ill. 166.

³⁴ Beveridge, *Abraham Lincoln*, Vol. I, pp. 594-596.

³⁵ 19 Ill. 136.

Lincoln liked to deal with principles. Whitney once said³⁶ that Lincoln had no regard for trivial things or for mere forms, that the pleadings in a lawsuit he either ignored or cut as short as he could; that he discarded all useless technicalities and got down to the merits of the case at once.

Herndon quotes this statement by Lincoln:³⁷

"I want no disputes and fusses with men about simple unimportant facts. I must conciliate. I want to argue the principles of law at the foundation of our differences."

Unfortunately, we do not have Lincoln's brief or a transcript of the argument in the *Morrison* case, but he undoubtedly argued the principle upon which the Court turned its decision.

The last cases argued by Lincoln for the Illinois Central in the Supreme Court of Illinois, in the very year of Lincoln's election to the Presidency³⁸ were six cases involving the law of mechanics' liens.³⁹ The opinion of the Court does not give the names of the counsel who appeared in these cases, and the name of the Illinois Central does not appear among the names of the parties. But Angle, in his day-by-day history of Lincoln during the year 1860,⁴⁰ says that in all of these six suits the Illinois Central was one of the defendants and that Lincoln argued them for the Illinois Central. The Court, in a six-line opinion, merely said that the petition for mechanics' liens did not show that by the contracts the work was to be completed within two years from the time the contracts were made, and that it had been repeatedly decided by the Supreme Court that this objection was fatal, and that the decrees of the lower court must be reversed.

We come now to the three tax cases which Lincoln argued on behalf of the Illinois Central in the Supreme Court. These cases involved the fundamental question whether, under the Illinois Central's charter, it was required to pay taxes in addition to those provided for in the charter. These cases were considered in a scholarly and exhaustive paper by Charles LeRoy Brown before this Conference a few

³⁶ *Life on the Circuit with Lincoln*, pp. 126, 233.

³⁷ Herndon, *Facts Illustrative of Mr. Lincoln's Patriotism and Statesmanship*, *The Abraham Lincoln Quarterly*, December, 1944, pp. 178, 179.

³⁸ January 14, 1860.

³⁹ *Radcliff v. Pierce, Reese, Crosby, Watson, Usher & Johns*, 23 Ill. 473.

⁴⁰ Angle, *Lincoln, 1854-1861*, January 14, 1860.

years ago.⁴¹ I shall, therefore, but briefly discuss these cases, calling attention, however, to some matters which I think may interest you.

The Act incorporating the Illinois Central requires it to pay to the State of Illinois a tax, to be applied to the payment of the State debt, of five per cent on the gross receipts from the so-called charter lines.⁴² These lines include the railroad from Cairo through Freeport to East Dubuque, and the branch from Centralia to Chicago. The Act further requires the Illinois Central to pay a State tax, in case a State tax is levied, with a proviso, however, that should the five per cent tax and the State tax not amount to seven percent of the gross receipts, then the Illinois Central shall pay into the State Treasury the difference, so as to make the whole amount paid equal to at least seven per cent of the gross receipts. The Act provides that the Illinois Central is exempted from all taxation of every kind except that provided for in the Act.

The Illinois Central, construing the charter as it read, took the position that it was exempt from the payment of county taxes. If this position were sustained, the counties through which the Illinois Central operated would be unable to collect any taxes on the property of the Illinois Central within these counties.

In August 1853, the County Assessor of McLean County assessed a tax on the property of the Illinois Central within that county. The Illinois Central brought suit to enjoin the collection of this tax. The Circuit Court entered a decree dismissing this suit. The Illinois Central appealed to the Supreme Court.

The case was argued in the Supreme Court on February 28, 1854, by Lincoln and Joy for the Illinois Central. It was later reargued, Lincoln and Joy again making the argument for the Illinois Central. The question of law presented was whether provisions respecting taxation in the Illinois Central charter contravened the constitutional provisions as to uniformity. The Court held⁴³ that it was within the constitutional power of the Legislature to commute by payment of a gross sum the property of a corporation from the payment of any

⁴¹ Charles LeRoy Brown, *Abraham Lincoln and the Illinois Central Railroad*, 1857-1860, *Journal of the State Historical Society*, June, 1943, Vol. xxxvi, pp. 121-163.

⁴² Act of February 10, 1851, *Session Laws of Illinois*, 1851, p. 72.

⁴³ *Illinois Central Railroad Co. v. County of McLean*, 17 Ill. 291.

portion of the taxes authorized to be levied for county purposes. The decree of the Circuit Court was reversed. The Court turned its decision upon the point that Lincoln argued.⁴⁴

There are several aspects of the case that give it color and interest. Lincoln wanted to try this case for the Illinois Central. On September 12, 1853, he wrote to the Clerk of Champaign County that McLean County had assessed the property of the Illinois Central, that an effort was about to be made to get the question of the right to so tax the Railroad Company before the Court and ultimately before the Supreme Court, and that the Illinois Central was offering to engage him. Continuing, he said:

"As this will be the same question I have had under consideration for you, I am somewhat trammelled by what has passed between you and me, feeling that you have the first right to my services, if you choose to secure me a fee something near such as I can get from the other side.

"The question in its magnitude to the Co. on the other hand and the counties in which the Co. has land on the other is the largest law question that can now be got up in the State, and therefore in Justice to myself, I can not afford, if I can help it, to miss a fee altogether.

"If you choose to release me, say so by return mail, and there is an end. If you wish to retain me, you had better get authority from your Court, come directly over in the stage and make common cause with this county [McLean County]."⁴⁵

On October 3, 1853, Lincoln wrote Mason Brayman, Counsel for the Illinois Central, that McLean County had not made any engagement with him in relation to its suit on the subject of taxation, and that he was now free to make an engagement with the Illinois Central, and that "If you think of it, you may count me in." Brayman counted him in, for in Brayman's letter of October 7, 1853, he retained Lincoln and sent him a draft for \$250.

Another interesting aspect of this suit is the controversy that arose over the payment of Lincoln's fee. There are many different versions respecting this controversy. I am going to quote what Lincoln's part-

⁴⁴ See the memorandum prepared by Lincoln entitled, *Proof*, which he had before him at the trial of the case brought to recover fees for services rendered in this suit. (*Abraham Lincoln as Attorney for Illinois Central Railroad*, published by Illinois Central Railroad Company.)

⁴⁵ Beveridge, *Abraham Lincoln*, Vol. I, p. 586.

ner, Herndon, said about this controversy in a lecture that he gave at Springfield on September 26, 1865, entitled, *Analysis of Character of Abraham Lincoln*, and only recently published in full:⁴⁶

"He never sued a client but once to my knowledge; and that was the Central Rail Road. He sued as much then for the insult as he did for his fee. The facts of the case are these—Mr. Lincoln had twice or three times argued a case before the Supreme Court of Illinois, involving millions of dollars *in time*—a constitutional question of taxation, arising under the Constitution and the General Laws of the land on the one hand and on the other hand a public act incorporating the Rail Road Company in which certain franchises-rights-authorities & powers were given and granted by solemn contract by the Legislature of Illinois to the company. Mr. Lincoln charged five thousand dollars for his trouble, and as his fees. He presented his bill to an agent—whiskered-ringed-mustachioed-curly headed-finely dressed pompous silly little clerk. This thing in boots made this remark to Mr. Lincoln—'Why, sir, Daniel Webster would not have charged that much.' Mr. Lincoln looked at the animal in clothes a short moment and was about to lift him over the counter for the insulting manner—not matter of the remark, but concluded to say nothing & do nothing then. He sued the Company and recovered the fee, I think to the last cent."

The Illinois Central's version of the story is somewhat different. The general counsel of the Illinois Central advised Lincoln that, while he recognized the value of his services, the payment of so large a fee to a western country lawyer without protest would embarrass the general counsel with the Company's Board of Directors in New York, who could not understand as well as would a lawyer the importance of the case and the value of Mr. Lincoln's services. It was intimated to Mr. Lincoln that, if he would bring suit for his bill and judgment was rendered in his favor, the judgment would be paid without appeal. Thereupon, Lincoln brought suit against the Illinois Central in the Circuit Court of McLean County in the spring of 1857.⁴⁷

When the case was reached for trial on June 18, 1857, no one appeared for the defendant, and judgment was taken by default for

⁴⁶ *Abraham Lincoln Quarterly*, December 1941, pp. 428-429. There were three lectures in this series, and they have only recently been reprinted. See *The Abraham Lincoln Quarterly*, September 1941, December 1941, and December 1944.

⁴⁷ Beveridge, *Abraham Lincoln*, Vol. I, pp. 590-593; *Abraham Lincoln as Attorney for the Illinois Central Railroad*.

\$5,000. That afternoon John M. Douglass, Solicitor of the Illinois Central, arrived from Chicago, too late to attend the trial. He told Mr. Lincoln that the default placed him in an embarrassing position, that Lincoln ought to have the fee, and asked him to permit the default to be set aside and the case retried. Mr. Lincoln consented, and the case was again tried on June 23, 1857. Lincoln said that Mr. Douglas had consented that a statement which he had written out and which had been signed by some of the prominent lawyers in the State might be read into evidence with the same effect as if depositions of these gentlemen had been taken. This certificate, signed by six well-known lawyers, stated that \$5,000 was a reasonable fee for the services Lincoln had rendered. Without Mr. Douglass' consent, it could not have been received in evidence.

The jury promptly returned a verdict for the full amount asked for, less the sum of \$200 already paid him (the exact amount of the retainer was \$250).

We have in the files of the law department statements by well-known lawyers at Bloomington, written many years ago, regarding this suit. These men were all present at the trial. It is clear from reading their letters that the suit was an amicable one, and caused no bitterness or ill-feeling between the Illinois Central and Lincoln.⁴⁸

Lincoln's capacity for clear and terse statement is displayed in the memorandum he prepared, entitled *Proof*, which he used at the trial of this case. We find in this memorandum the following statement:⁴⁹

"Are, or are not the *amount of labor*, the *doubtfulness* and *difficulty* of the *question*, the *degree of success* in the result; and the *amount* of pecuniary interest *involved*, not merely in the particular case, but covered by the principle decided, and thereby *secured*, to the client, all proper elements, by the custom of the profession to consider in determining what is a reasonable fee in a given case?"

This appears to be as good a statement as could be made of the elements that should be considered in the fixing of fees.

⁴⁸ Statements of Ezra M. Prince, April 5, 1906; James S. Ewing, April 5, 1906; Adlai E. Stevenson, April 6, 1906; Charles L. Capen, April 6, 1906.

⁴⁹ Angle, *New Letters and New Papers of Lincoln*, p. 168.

The Illinois Central Railroad Company delayed the payment of the judgment, apparently because of financial troubles arising out of the Panic of 1857. On August 1, 1857, a Writ of Execution was issued by the Sheriff; and on August 12, 1857, \$4,800, the exact amount of the judgment, was paid to Lincoln. He paid half of this sum to his partner, Herndon, and loaned the other half, \$2,400, to Norman B. Judd.⁵⁰

Weik⁵¹ quotes this statement by Herndon respecting the payment of the judgment:

"The judgment was finally paid, and Lincoln gave me my half. He brought the money down from Bloomington one evening, and sent me word to come to the office. It was after dark, and when he had pushed my share of the proceeds across the table to me, he covered it for an instant with his hand, smiling, and said, 'Billy, it seems to me it will be bad taste on your part to keep on saying the severe things I have heard from you about railroads and other corporations. The truth is, instead of criticizing them, you and I ought to thank God for letting this one fall into our hands.'"

That this litigation over Lincoln's fee did not dissolve the relationship of client and attorney which had existed between the Illinois Central and Lincoln, is shown by the fact that within a short period of time Lincoln was again called upon to handle for the Illinois Central two very important cases involving the amount of taxes to be paid by the Illinois Central to the State.⁵²

⁵⁰ Pratt, *The Personal Finances of Abraham Lincoln*, p. 54.

⁵¹ Weik, *The Real Lincoln—A Portrait*, p. 155; see also Herndon, *Life of Lincoln*, p. 284.

⁵² That the suit which Lincoln brought to recover his fee in the *McLean County* case did not affect his relations with the Illinois Central Railroad Company, is also shown by the letter (Pratt, *The Personal Finances of Abraham Lincoln*, p. 53) which Ebenezer Lane, resident Director of the Illinois Central in Chicago, wrote on May 14, 1857 to Mr. W. H. Osborn, President of the Illinois Central. The last paragraph of this letter reads as follows:

"Meanwhile we settled with Lincoln and fortunately took him out of the field, or rather engaged him in our interests. This is the more fortunate, as he proves to be not only the most prominent of his political party, but the acknowledged special adviser of the Bissell administration."

Pratt says that it is natural to ask why Lincoln continued his suit against the Illinois Central for his fees if the Illinois Central had settled with Lincoln. He gives his explanation: that the Illinois Central officials in the West had to convince the Company's Board of Directors in New York City that the fees had to be paid, and paid at a time when the Company was very short of funds.

The Auditor of Public Accounts of the State, in his Report to the Legislature of December 1, 1858,⁵³ said that the taxes upon the assessed value of the Illinois Central's property when added to the five per cent tax exceeded seven per cent of the gross earnings for 1857, and that the Illinois Central insisted that under its charter its liability for taxes could not exceed seven per cent of its gross earnings, while on the part of the State it was insisted that its liability could not be less than seven per cent of its gross earnings but might be more, depending upon the assessed valuation of the property.⁵⁴ The Auditor made assessments which would have resulted in the payment of a State tax exceeding two per cent of the gross receipts, which would have brought the total payment of taxes under the charter to a sum greater than seven per cent of the gross receipts. The Illinois Central having paid seven per cent of its gross receipts for the year 1859, declined to pay any more, and appealed to the Supreme Court, under the Act of February 21, 1859,⁵⁵ from the assessment made by the Auditor.

Before the case was tried in the Supreme Court, the Auditor, Jesse K. DuBois, and other State officers, including Stephen T. Logan,

⁵³ Session Laws of Illinois, 1859, pp. XIX-XXIII.

⁵⁴ The Auditor, Jesse K. DuBois, was Lincoln's close friend. In the Autumn of 1857 a dispute arose between the Company and the Auditor as to the amount of taxes due Illinois under the Illinois Central's charter. The Illinois Central offered to pay what it believed to be due—\$86,449.02. The Auditor, however, contended that an additional sum of \$94,000 was due to the State on the basis of the Auditor's assessment for the State taxes. On December 21, 1857 Lincoln wrote DuBois the following letter:

"Dear DuBois:

"J. M. Douglas, of the I.C.R.R.C., is here and will carry this letter. He says they have a large sum (near \$90,000) which they will pay into the treasury now, if they have an assurance that they shall not be sued before January 1859—otherwise not. I really wish you would consent to this. Douglas says they *can not* pay more, and I believe him.

"I do not write this as a lawyer seeking an advantage for a client; but only as a friend, only urging you to do what I think I would do if I were in your situation. I mean this as private and confidential only, but I feel a good deal of anxiety about it.

Yours as ever,

A. LINCOLN."

The Auditor apparently followed Lincoln's advice. It is to be borne in mind that at this time the country was in the throes of the Panic of 1857. The Illinois Central on October 9, 1857 had been forced to suspend payment. (Beveridge, *Abraham Lincoln*, Vol. I, pp. 596, 597; Brown, *Lincoln and the Illinois Central, 1857-1860*, Journal of the Illinois State Historical Society, June, 1943, Vol. XXXVI, pp. 139-141.)

⁵⁵ Session Laws of Illinois, 1859, pp. 206-207.

the principal attorney for the Auditor, together with Abraham Lincoln, made a trip over the Illinois Central Railroad in a private car for the purpose of familiarizing the State officers with the property of the Railroad Company. This trip took nine days (from July 14 to July 23, 1859). DuBois, Logan, and Lincoln took their respective families along on this trip.⁵⁶

The case was tried for the Illinois Central by Lincoln before the Supreme Court at Mt. Vernon on November 18 and 19, 1859. Lincoln called ten witnesses who testified regarding the value of the Illinois Central's property. The case was immediately argued and the Court entered its order on November 21, 1859, finding that the value of the railroad was \$4,942,000, the exact amount set up in the Illinois Central's return for that year. The Court handed down no written opinion.⁵⁷ The State tax applied to this value amounted to slightly less than two per cent of the gross receipts. This two per cent had been paid by the Illinois Central to the State, and under the order of the Court there was no additional amount for the Company to pay on the 1859 State tax.

There was then pending, however, in the Springfield Grand Division of the Supreme Court an action of debt for the 1857 State taxes. This case was argued in the Illinois Supreme Court on January 12, 1860, John M. Douglass and Lincoln appearing for the Illinois Central. The Court said that it considered it would be unnecessary to make any decision upon the question whether under the charter the Railroad Company could be compelled to pay any taxes exceeding in amount two per cent of the gross receipts; that the case turned upon the question whether the property of the Railroad Company had been estimated too high and, if too high, how much it should be reduced to conform to the real taxable value. On this point it was agreed that the evidence heard by the Court at Mt. Vernon should be considered the evidence then before the Court.

The Court at the November, 1861, Term⁵⁸ found that the value of the Railroad Company's property in 1857 was the same as that it

⁵⁶ Angle, *Lincoln, 1854-1861*, pp. 289-290; Starr, *Lincoln and the Railroads*, pp. 67-68; Brown, *Abraham Lincoln and the Illinois Central Railroad, 1857-1860*, *Journal of the Illinois State Historical Society*, June, 1943, Vol. XXXVI, p. 152.

⁵⁷ The order of the Court is set out in the Opinion by the Court in *State of Illinois v. Illinois Central Railroad Co.*, 27 Ill. 56.

⁵⁸ *State of Illinois v. Illinois Central Railroad Co.*, 27 Ill. 64.

had earlier found for 1859—\$4,942,000. Here again the Railroad Company had no State tax to pay in addition to the amounts it had theretofore paid to the State. It was contended by counsel for the State that the prospective value of the Illinois Central Railroad should be taken into consideration, and not its income. The Court, in the concluding paragraph of its opinion (pp. 69-70), made this interesting observation:

"This road is doing its best, and it is proved it has no net income—no profit on its cost, and is not a good investment at a value greater than that fixed by its owners, and proved on this trial. In process of time it may produce a greater income, when its value for taxation will be fixed proportionately higher. Under the law it must be valued and assessed every year, and whenever it shall produce twice as great an income as it does at present, it will be valued, of course, twice as high."

The determination of the issues in these three tax cases was of the greatest importance to the Illinois Central. The work that Lincoln did in these cases shows his sagacity, his generalship, and his ability as a lawyer. As Angle put it a few years ago.⁵⁹

"The Illinois Central may well be proud of Abraham Lincoln—not because he afterwards became President of the United States but because as an attorney he served his client superlatively well."

In closing these remarks on Lincoln as an Illinois Central lawyer, I cannot refrain from quoting what Herndon said respecting Lincoln's ability as a trial lawyer and as an advocate in an Appellate Court. I think Herndon's opinion will interest you. In appraising Herndon's estimate of his partner, we must bear in mind that Herndon was more closely associated with Lincoln than any other man. I should add, however, that Herndon's opinion of Lincoln as a trial lawyer has not been accepted by all students of Lincoln's career as a lawyer.⁶⁰ Herndon said in one of his lectures entitled, *Analysis of the Character of Abraham Lincoln*.⁶¹

"It is said that Mr. Lincoln was an excellent *nisi prius* lawyer—i. e., a good Circuit Court lawyer. To reasonable men he had scarcely a quality of a *nisi prius* lawyer, as the world understands

⁵⁹ *Lincoln Defended Railroad*, Illinois Central Magazine, February, 1929, p. 40.

⁶⁰ Beveridge, *Abraham Lincoln*, p. 573; Angle, *Abraham Lincoln, Circuit Lawyer*, Lincoln Centennial Association Papers, February 11, 1928, pp. 20, 21.

⁶¹ *The Abraham Lincoln Quarterly*, December, 1941, pp. 429-430.

that word. The qualities of a *nisi prius* lawyer are: quickness, sharpness, versatility of mind, a mind that can move and leap here and there as occasions and contingencies quickly demand and quickly form accurate judgments. Technical, quick, analytic, sagacious, cunning minds—cold, heartless—conscienceless men succeed in the Circuit Courts in bad cases and good alike. I have seen Mr. Lincoln sent out of court a thousand times because figuratively speaking an ‘i’ was not dotted and a ‘t’ crossed. If success was a test of the character of a *nisi prius* lawyer, Mr. Lincoln could not undergo the test. My great ideal of a *nisi prius* lawyer is the gentlemanly Lucifer driving legal business among mankind. The pious, accomplished-witty-clever Mephistopheles of Goeta [sic] would have made a polished and accomplished *nisi prius* lawyer. I do not consider it any compliment to Mr. Lincoln to call him an excellent Circuit Court lawyer.

“Mr. Lincoln was a great lawyer in the Federal Courts, in the Supreme Court of the State of Illinois, and in the Circuit Courts of the State, when he had time to prepare his cases. In the Federal Courts and the Supreme Court of this State he did have time and did thoroughly prepare and understand his case. He was then a Number One lawyer. In the Circuit Court I place Mr. Lincoln as a third-rate attorney.”

Richards, in his work on Lincoln,⁶² says that the record of Lincoln while a practicing lawyer reveals the source of the greatness that was so manifest when he was called upon to deal with the affairs of the Nation. The Illinois Central Railroad Company may well take pride in the fact that the work that Lincoln did for the Illinois Central, in his office, in the trial courts, and in the Supreme Court, made some contribution to the greatness of Lincoln which has placed him among the immortals.

⁶² *Abraham Lincoln—Lawyer-Statesman*, p. 89.

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